IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9368 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHAVAL ALIAS CHAKO PRAVINBHAI GUJJAR

Versus

STATE OF GUAJRAT

Appearance:

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/08/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 23.1.2003 passed by the Police Commissioner, Ahmedabad City,

against him under exercise of power under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act and directing detention of the petitioner. In pursuance of the said order impugned in this petition, the petitioner is detained in jail since 23.1.2003.

2. The ground reveals as served upon the petitioner and placed on record that in all three offences came to be registered against the petitioner at Naroda Police Station, at Amraiwadi Police Station and at Sardarnagar Police Station under Section 379 of the IPC for the theft of 2 wheeler vehicles and offences came to be registered on 19.10.2002, 18.1.2003 and 20.1.2003. Ground also reveals that the proposing authority recorded the statements of two witnesses on 20.1.2003 and 21.1.2003, identity of whom were kept concealed under Section 9(2) of the PASA Act. According to the statements of the witnesses, it is alleged that petitioner approached one of the witness and on suspicion that the said witness was informing the Police about the activities of the petitioner came to be beaten by the petitioner and when crowd was gathered, the petitioner with a knife in his hand threatened the crowd. The said statement is verified by the detaining authority on 22.1.2003. The other witnesses stated before the proposing authority that the petitioner approached him with one motorcycle which was stolen and demanded Rs. 10,000/- in lieu of the said motorcycle. When the witness denied to deal with the petitioner, started beating the witness and crowd gathered, and at the place of incident the petitioner took out knife and threatened witness to kill. The petitioner also threatened the crowd with the knife and, therefore, there was disruption of public order. The said statement is verified by the detaining authority on 22 of January, 2003. From the above material, the detaining authority reached to the subjective satisfaction that the petitioner was a dangerous person within the meaning of the PASA Act and was required to be detaied. Being aggrieved by the said order, the Special Civil Application is preferred by the petitioner.

3. Learned Advocate Mr. Amrish K. Pandya for learned Advocate Mrs. K.U. Mishra for the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length. Mr. Chauhan placed on record affidavit filed by the then detaining authority which is taken on record.

4. Amongst the various grounds and contentions raised on behalf of the petitioner, this petition is required to be disposed of on sole ground that whether the detaining authority had sufficient material to reach to the subjective satisfaction that petitioner was a dangerous person within the meaning of PASA Act and was disrupting public order. Having regard to the definition of "dangerous person" as envisaged by the Act under Section 2(c), dangerous person means a person either individually or a leader of a gang habitually commits or attempts to commit offence punishable under the Indian Penal Code as envisaged by the said Section, while Section 3(1) of the said Act clearly lays down that when the activity of such dangerous person is in any manner prejudicial to the maintenance of the public order and with a view to prevent him, his detention is necessary, then the order under Section 3(1) of the PASA Act be passed by the State Government. Now, for declaring the petitioner as a dangerous person and to reach a subjective satisfaction as to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, the detaining authority relied upon three crimes registered against the petitioner, as said above, and two statements of the witnesses, as narrated above, as revealed from the ground placed on record. Firstly, habitually committing an offence being necessary ingredient of Section 2(c) of the PASA Act necessarily leads this Court to examine the aspect whether the petitioner was committing the crimes as envisaged by Section 2 (c) of the PASA Act, which may be branded as habitually committed crimes. In the case of MUSTAKMIYA JABBARMIYA SHAIKH vs. M.M. MEHTA, COMMISSIONER OF POLICE & ORS., reported in 1995(2) GLR 1268, the Supreme Court laid down that the expression 'habit' or 'habitual' does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. Therefore, in the case on hand, through three crimes are registered against the petitioner but having regard to the totality of the circumstances and having regard to the time gap, one cannot come to the conclusion that the petitioner was habitually committing the offences as envisaged by Section 2(c) of the PASA Act. This is so because the first offence came to be registered on 19.10.2002, the next one on 18.1.2003 and third one on 20.1.2003. These instances, though the second and third are in proximity in time, but since the first instance, alleged to have taken place on 19.10.2003, fails to reveal the habitual tendency of the petitioner to commit the crime as envisaged by Section 2(c) of the PASA Act as laid down by the Apex Court in the matter of Mustakmiya Jabbarmiya

Saikh (supra).

5. This again, the question is whether if the two statements, as referred above, is taken on face value, would lead to a subjective satisfaction that the behaviour of the petitioner would amount to the disrupting of the public order. Public order, as referred in the Act, is different from law and order. What is revealed from the statements of each of the witnesses is individual vendetta of the petitioner against each of the witness and not public at large. Therefore, the case would fall under the maintenance of public order and not disruption of the public order. The Apex Court in the above said decision of Mustakmiya Jabbarmiya Shaikh (supra) in para 11 observed as under, in similar circumstances, which is self-explanatory :

"This brings us to the criminal activities of the detenu - petitioner which are said to have taken place on 10.8.1994 at 4.00 p.m. and on 12.8.1994 at 7.00 p.m. In the incident dated 10.8.1994 the petitioner is alleged to have purchased goods worth Rs.500/- from a businessman and on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly, it is alleged that on 12.8.1994 at about 7.00 p.m. the detenu petitioner stopped the witness on the road near the eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates. The petitioner is also alleged to have rushed towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incident directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implications which may affect further breaches of the law and order which may result in subversion of the public order. As said earlier, the Act by itself is not determinant of its own gravity but it is the potentiality of the act which matters."

6. From the above, it is clear that it is neither case of habitually committing the offence as envisaged by Section 2 (c) of the PASA Act, consequently, to declare the petitioner to be a dangerous person, and secondly the subjective satisfaction of the detaining authority is also vitiated on the ground that the material on which the detaining authority relied upon only affects the maintenance of law and order and not disruption of the public order.

7. In the above view of the matter, this Special Civil Application is allowed with no orders as to costs. The order passed by the Police Commissioner, Ahmedabad City, on 23.1.2003 detaining the petitioner under the PASA Act is quashed and seta side. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair